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FEDERAL COMMUNICATIONS COMMISSION
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April 19, 1993

Ms. Donna Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20054

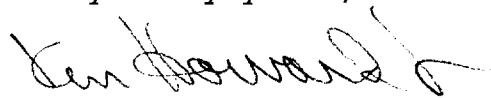
Re: Scripps Howard Broadcasting Company
MM Docket 93-94

Dear Ms. Searcy:

Transmitted herewith, on behalf of Scripps Howard Broadcasting Company, licensee of Television Station WMAR-TV, Baltimore, Maryland, and a party in the above referenced proceeding, is an original and six (6) copies of its Opposition to Request for Certification.

If you have any questions regarding this matter, please contact the undersigned.

Very truly yours,


Kenneth C. Howard, Jr.
Counsel for Scripps Howard
Broadcasting Company

cc: The Honorable Richard L. Sippel (with enclosures)
Ms. Barbara Kreisman (with enclosures)

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APR 19 1993

Before the
Federal Communications Commission
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of)	MM Docket No. 93-94
)	
Scripps Howard)	File No. BRCT-910603KX
Broadcasting Company)	
)	
For Renewal of License of)	
Station WMAR-TV,)	
Baltimore, Maryland)	
)	
and)	
)	
Four Jacks)	File No. BPCT-910903KE
Broadcasting, Inc.)	
)	
For a Construction Permit for)	
a New Television Facility on)	
Channel 2 at Baltimore, Maryland)	

To: The Honorable Richard L. Sippel
Presiding Administrative Law Judge

**OPPOSITION TO REQUEST TO
CERTIFY APPLICATION FOR REVIEW**

Scripps Howard Broadcasting Company ("Scripps"), through counsel, hereby respectfully submits its Opposition to the Request to Certify Application for Review ("Request"), filed by Four Jacks Broadcasting, Inc. ("Four Jacks").

Scripps Had No Obligation to Report the Findings in the PacWest Decision Because Scripps Was Not A Party to the Case and the Findings Were Not Made Against It.

1. Four Jacks' Request is based on special jury verdicts in Pacific West Cable Co. v. City of Sacramento, 672 F. Supp. 1322 (E.D. Cal. 1987) ("PacWest"). The Request is the fifth attempt to apply those special verdicts to Scripps in an FCC proceeding. This latest attempt is as futile as the other four because, as Four Jacks admits--and as the FCC has held--neither Scripps nor any related company was a party to that proceeding.

interests of a shared principal, filed informal objections against the license renewals of Scripps stations WXYZ-TV, WEWS-TV, and WCPO-TV. Weststar alleged, inter alia, that the special verdicts were an adverse adjudication of anti-competitive conduct against Scripps and that Scripps had an obligation to report them. On November 27, 1989, the Video Services Division ("VSD") denied the informal objections in a letter that specifically stated, "Scripps Howard was not a party to the suit brought by the Pacific West Cable Company and, therefore, was under no obligation to report a case to which it is not a party." See Exhibit A.

5. Weststar filed a petition for reconsideration of the VSD's decision and a petition to deny the renewal of Scripps' station KSHB containing the same allegations.² See Exhibit B. The VSD later granted Weststar's request to withdraw both petitions and stated:

"[W]e have fully considered the matters set forth and we conclude there are no substantial and material questions of fact that would warrant inquiry in either proceeding."

The VSD further held that Scripps was qualified to be a licensee.

6. In spite of the FCC's rulings on Weststar's petitions, PacWest filed a petition for reconsideration, relying on the same Sacramento proceedings, of the grant of Scripps' application to assign the license of WMAR-TV from Gillett Broadcasting of Maryland, Inc. to Scripps. The VSD later granted PacWest's request to dismiss that petition. See Exhibit C. PacWest also filed a

² The pleadings in the proceedings discussed here and below run to several hundred pages. Scripps will supply copies on the Presiding Judge's request.

petition to deny the renewal of Scripps' stations KUPL(AM)/KUPL-FM, relying on the Sacramento proceedings. The Audio Services Division ("ASD") granted PacWest's request to withdraw this petition in a letter dated July 27, 1992. See Exhibit D. Both the VSD and the ASD stated in their opinions that the staff had fully considered the matters raised in the petitions and had concluded that there were no substantial and material facts warranting inquiry. In both actions, the staff stated that Scripps was fully qualified to be an FCC licensee. See Exhibits C & D.

7. The FCC has already ruled four times that the matters raised in the PacWest proceedings do not affect Scripps' qualifications to be a licensee. See Exhibits A,B,C & D. The VSD has explicitly stated that Scripps had no obligation to report the findings in PacWest because Scripps was not a party to PacWest. Exhibit A. The allegations arising from the PacWest case have been thoroughly reviewed by the FCC staff and resolved in Scripps' favor and should not be raised again in this proceeding or any other. Four Jacks' Request should, therefore, be denied.

The Staff's Letter Did Not Refer to
the WMAR-TV Renewal Proceeding

8. Four Jacks claims that the ASD's July 27, 1992 letter stated that the antitrust allegations against Scripps' cable subsidiary would be resolved in the WMAR-TV renewal proceeding. Four Jacks has clearly misinterpreted the ASD's letter.

9. In the July 27 letter, the ASD stated:

To the extent that PacWest's Petition to Deny in this proceeding cross references allegations made in its Petition for Reconsideration of Scripps' acquisition of

Station WMAR-TV, Baltimore, we also find that those matters do not adversely impact the grant of the KUPL/KUPL-FM renewal applications. However, we make no finding as to the impact of those allegations on Station WMAR-TV. Those allegations will be resolved in the context of the WMAR-TV proceeding.

Exhibit D. When read in context, the ASD's language clearly refers to the WMAR-TV assignment proceedings, which the ASD apparently did not know were completed, not the WMAR-TV renewal application.

10. Even excluding consideration of the context of the ASD's statement, it defies logic to assert that the ASD would intend-- or could bind the Commission to--the bizarre position that allegations regarding anti-competitive activity by Scripps' cable subsidiary could legally be dismissed in a renewal proceeding where they were raised, but would nevertheless require further resolution in an even more remote renewal proceeding where the allegations had not been raised. Four Jacks' Request is obviously and necessarily a misinterpretation of the ASD's letter, and it should be denied.

WHEREFORE, Scripps Howard Broadcasting Company respectfully requests that the Request to Certify Application for Review filed by Four Jacks Broadcasting Company be DENIED.

Respectfully submitted

SCRIPPS HOWARD
BROADCASTING COMPANY

BAKER & HOSTETLER
1050 Connecticut Avenue, N.W.
Suite 1100
Washington, D.C. 20036
(202) 861-1580
Dated: April 19, 1993

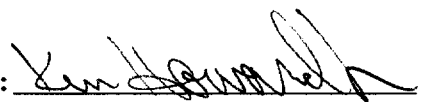
By: 
Kenneth C. Howard, Jr.
David N. Roberts

EXHIBIT A

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MAIL BRANCH

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Sgt Schildhouse, Esq.

Parrot, Schildhouse and Wilson

application regarding that suit as well as the Weststar suit, constitutes sufficient reason for the Commission to stay its grants of the renewal applications.

Based on our review of your pleading, we find that Scripps-Howard was not a party to the suit brought by the Pacific West Cable Company and, therefore, was under no obligation to report a case to which it is not a party. As to your allegation that Scripps-Howard failed to report the pending Weststar suit, Question 4 of FCC Form 303-S has been revised to require an applicant to report adverse findings or final actions. The Commission has stated that it would refrain from taking an action on non-FCC misconduct, which includes anti-competitive practices, prior to adjudication by another agency or court. Character Qualification in Broadcast Licensing, 102 FCC2d 1179, 1204, 1205 recon. denied, 1 FCC Rod. 421 (1985), appeal docketed sub nom., National Broadcasting v. F.C.C., No. 85-1179 D.C. Cir. March 17, 1986). You have not indicated any such adjudication or shown that Scripps-Howard has not complied in any way with Commission Rules and policies. Therefore, based on the foregoing, we find that you have failed to raise a substantial and material question of fact to warrant a stay of our earlier actions granting the license renewals for Stations WCPO-TV, WHNS(TV) and WXYZ-TV.

In view of the foregoing, your informal objection IS DENIED and the grants ARE AFFIRMED.

Sincerely,

Roy J. Stewart
Chief, Video Services Division
Mass Media Bureau

MEvans:ebc/vsd:MM
eula/tvbranch - sol

EXHIBIT B

Sol Schildhouse, Esq.
Farrow, Schildhouse & Wilson
1730 N Street, N. W.
Washington, D. C. 20036

Dear Mr. Schildhouse:

This is in reference to your request for Communications (Hearst), of an action of the Services Division, Mass Media Bureau, which grant of the renewal applications (BACT-87) Cincinnati, Ohio WDSB-TV, Cleveland, Ohio Sol Schildhouse, Esq., (Video Services Div) This is also in reference to Hearst's petition (BACT-87100138) of Scripps-Boward Broadcasting City, Missouri.

On March 1, 1988, in behalf of Hearst, you willent not to pursue its petition for renewal noted above. In any event, we have fully concluded that there are no substantial and warrant any further inquiry in either proceeding for reconsideration and petition to deny a found Scripps-Boward Broadcasting Co. full application for renewal of license for Scripps has been granted this day.

cc: Donald P. Zelnick, Esq.

Glaser/dlr/tv/vds:esb
Typed: February 29, 1988
DLH /z/deborah/tv - sol

EXHIBIT C

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

FEB 22 1991

IN REPLY REFER TO:

Sol Schildhouse
Farrow, Schildhouse & Wilson
1400 16th Street, N.W.
Suite 501
Washington, D.C. 20036

Re: Assignment of WMAR-TV, Baltimore, MD
File No. BALCT-900910KE

Dear Mr. Schildhouse:

This refers to your January 29, 1991 request on behalf of Pacific West Cable Television (PacWest) to withdraw its petition for reconsideration with regard to the Commission's approval of the assignment of license application for Station WMAR-TV, Baltimore, Maryland (BALCT-900910KE). In its request for withdrawal, PacWest states that it has neither sought nor received nor been promised any money or other consideration for withdrawing its petition for reconsideration. Further, PacWest states that there are no other arrangements, oral or written, among the petitioner and the applicants concerning this withdrawal.

Despite your request for withdrawal of these pleadings, we have nevertheless fully considered the matters set forth in them and conclude that there are no substantial and material questions of fact that would warrant any further inquiry. Booth American Co., 58 F.C.C. 2d 553, 554 (1976). Accordingly, the petition for reconsideration IS DISMISSED, and the grant of the application assigning the license of WMAR-TV from Gillatt Broadcasting of Maryland, Inc. to Scripps Howard Broadcasting, IS AFFIRMED.

Sincerely,



Clay C. Pendarvis
Chief, Television Branch
Video Services Division
Mass Media Bureau

cc: Donald Zeifang, Esquire
Vincent A. Pepper, Esquire
Martin Leader, Esquire

EXHIBIT D

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20541

JUN 28 7 03 AM 1992

IN REPLY REFER TO:

1800B-1B

Donald P. Ziefang
Baker & Hostetler
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304

Sol Shildhouse
Farrow, Shildhouse & Wilson
1400 16 Street, N.W.
Washington, D.C. 20036

RE: KUPL(AM) and KUPL-FM
Portland, Oregon
File Nos. BR-901002BL, BRH-901002DB

Dear Messrs. Ziefang and Shildhouse:

This is in reference to the Petition to Deny that Pacific West Cable Television (PacWest) filed against the license renewal applications for stations KUPL and KUPL-FM, licensed to Scripps Howard Broadcasting Co. The Petition to Deny alleges that the licensee's cable television subsidiary engaged in anticompetitive behavior. PacWest also raised these allegations in a civil suit, which was settled with no adjudicated findings. In June 1992, PacWest filed a Request for Dismissal of the Petition to Deny. PacWest and Scripps Howard certify that there was no consideration paid or received in exchange for dismissal of the Petition to Deny. See 47 C.F.R. Section 73.3588(a).

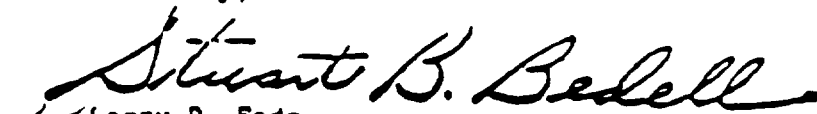
The parties have satisfied our requirements regarding the withdrawal of Petitions to Deny. It is nonetheless our practice to review independently issues raised in such petitions that are relevant to the basic qualifications of a renewal applicant. The Petition to Deny challenges the basic character qualifications of the licensee, but our review of these allegations finds no substantial and material question of fact as to whether grant of the KUPL/KUPL-FM renewal applications would be in the public interest. See Policy Regarding Character Qualifications in Broadcast Licensing, Gen. Docket No. 81-500, 102 FCC2d 1179 (1986), recon. granted in part and denied in part, 1 FCC Rcd 421 (1986), appeal dismissed sub nom., National Association for Better Broadcasting v. FCC, No. 86-1179 (D.C. Cir. June 11, 1987), modified 5 FCC Rcd 3252 (1990).

To the extent that PacWest's Petition to Deny in this proceeding cross-references allegations made in its Petition for Reconsideration of Scripps Howard's acquisition of Station WHAR-TV, Baltimore, we also find that those matters do not adversely impact the grant of the KUPL/KUPL-FM renewal applications. However, we make no finding as to the impact of those allegations on Station WHAR-TV. Those allegations will be resolved in the

context of the WMAR-TV proceeding.

Accordingly, PacWest's Request for Dismissal of its Petition to Deny IS GRANTED and its Petition to Deny the license renewal applications of KUPL and KUPL-FM, Portland, Oregon IS DISMISSED. Further, we find that grant of the license renewal applications would serve the public interest. Accordingly, the license renewal applications of Scripps Howard Broadcast Company for stations KUPL and KUPL-FM, Portland, Oregon ARE GRANTED.

Sincerely,


for Larry D. Eads
Chief, Audio Services Division
Mass Media Bureau

cc: Television Branch, Video Services Div. (WMAR-TV proceeding)

Certificate of Service


I, Diane Wright, a secretary in the law offices of Baker & Hostetler, hereby certify that I have caused copies of the foregoing "Opposition to Request for Certification" to be hand-delivered this 19th day of April, 1993 to the following:

The Honorable
Richard L. Sippel
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 214
Washington, DC 20554

Martin R. Leader, Esq.*
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Broadcasting, Inc.

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Diane Wright

* By First Class Mail